



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172985

PRELIMINARY RECITALS

Pursuant to a petition filed March 22, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 20, 2016, at Milwaukee, Wisconsin.

The issue for determination is (1) whether the petitioner's appeal of a 2012 tax intercept is timely, (2) if timely, whether the agency properly implemented the tax intercept, and (3) whether an appeal of the underlying overpayment is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner was incarcerated from May 2, 2011 to May 21, 2013. Prior to being incarcerated the petitioner received FoodShare (FS) benefits.

3. The petitioner never reported to the agency that she was incarcerated. Her FS benefits continued while she was incarcerated. There were no new cards and no pin change done at or about the time in which the petitioner began her incarceration.
4. On July 10, 2012 the agency sent the petitioner a notice of FS overpayment with a worksheet explaining the overpayment. The petitioner was overpaid \$1,600 in FS benefits from October 1, 2011 to May 31, 2012 under claim number [REDACTED]
5. On August 2, 2012 the agency mailed the petitioner a repayment agreement.
6. On September 5, 2012, October 2, 2012, and November 2, 2012 the agency sent the petitioner dunning notices reminding her of the FS overpayment.
7. On December 14, 2012 the agency sent the petitioner a notice that it would intercept her taxes for the unpaid FS overpayment.
8. The overpayment notice, repayment agreement, dunning notices, and tax intercept were not sent to the petitioner's correct address. The petitioner was incarcerated when those notices were sent, and the notices were not sent to her at the prison. She did not receive those notices until the hearing.
9. The petitioner was released from prison at the end of May in 2013. She applied for FS benefits, and began receiving FS benefits. On October 7, 2013 the agency mailed the petitioner a notice stating that her monthly FS benefits would be decreased from \$848 to \$796 for the agency to recoup a past due FS overpayment. This notice was mailed to the petitioner correct address, and the petitioner was aware that her FS benefits were being reduced to recoup the overpayment.
10. On March 22, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

To use tax intercept, the person must have received a Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

In this case the petitioner did not receive the original overpayment notice, the repayment agreement, the dunning notices, or the notice of tax intercept. The petitioner was not concerned about the tax intercept because she did not have taxes that could be intercepted. Nonetheless, I am remanding the tax intercept issue to the agency to reissue the notices before intercepting the petitioner's taxes in the future.

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

In this case although the petitioner did not receive the original overpayment, she received a notice in 2013 stating that her FS benefits were being reduced to recoup the FS overpayment. She knew about this FS overpayment for two and half years before appealing to the Division of Hearings and Appeals. In FS cases, recipients have 90 days to appeal a negative action. The petitioner is well beyond 90 days from when she learned about the overpayment.

The petitioner argues that she should not be responsible for the overpayment because she was in prison during the FS overpayment period. Although the petitioner is correct that she was in prison, she was receiving FS benefits prior to entering prison. She never informed the agency that she was incarcerated and no longer needed FS benefits. In addition, there was no new FS/Quest card issued, and her pin was

not changed. Either the petitioner gave someone else her card and pin prior to entering prison or did so after she entered prison, so that her FS benefits could be used. This is trafficking of the FS benefits. Thus, even if I had jurisdiction, I would find that the FS overpayment was correct.

CONCLUSIONS OF LAW

- (1) The petitioner's appeal of the tax intercept is timely.
- (2) The agency incorrectly implemented a tax intercept because the petitioner did not receive all of the required notices.
- (3) The petitioner's appeal of the underlying overpayment is untimely because she know about the overpayment since October 2013, and did not file her appeal until March 22, 2106.

THEREFORE, it is

ORDERED

That this case is remanded to the agency to re-issue a repayment agreement, dunning notices, and notice of tax intercept to the petitioner's correct address. The agency shall comply with this order within 10 days from the date of decision. This appeal is dismissed in all other respects.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

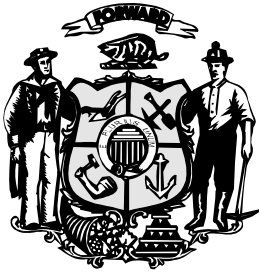
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

...

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 13, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit